IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3132 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MV SISODIYA

Versus

TR SONGRA OR HIS SUCCESSOR IN OFFICE

Appearance:

MR MK VAKHARIA for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1

NANAVATI ASSOCIATES for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 16/01/2004

ORAL JUDGEMENT

1. The present petition is preferred by the petitioner for challenging the legality and validity of the order dated 30th October, 2002 passed by the Assistant Labour Commissioner (Central) and the petitioner has also challenged the legality and validity of the order dated 12th July, 2002 passed by respondent No.2 for terminating the service.

2. Having heard the learned Counsel for the petitioner, Ms.Archana Amin for Mr.Vakharia, Mr.M.R.Shah, learned Standing Counsel for respondent No.1 and Mr.Gandhi, learned Counsel for respondent No.2, it appears that certain allegations were made by the petitioner against the Officer concerned respondent No.1. There are allegations and counter-allegations. On the one hand, it is the case of the petitioner that even otherwise also there is no power to close the proceedings as per the impugned order. On the other hand, it is submitted by respondent No.1 that since the petitioner did not remain present, the Officer had to proceed ex-parte and to pass the appropriate orders.

3. Ms.Archana Amin for the petitioner, however, submitted that if the Hon'ble Court considers the matter for remand and reconsideration, the petitioner is prepared to withdraw the allegations.

Mr.M.R.Shah, learned Standing Counsel appearing for respondent No.1, submitted that since the petitioner even earlier had made baseless allegations, even if the matter is remanded back to respondent No.1, the allegations may be made again and, therefore, the petitioner should first withdraw the allegations and if the allegations are withdrawn, respondent No.1 has no objection in reconsidering the matter if ultimately this Court finds it proper to give such direction.

Mr.Gandhi, learned Counsel for respondent No.2 has left the matter to the Court so far as the conciliation proceedings and reference are concerned. However, he submitted that the petition for relief prayed against the order of termination would not be maintainable since respondent No.2 is not a "State" within the meaning of Article 12 of the Constitution of India and he submitted that in any event, respondent No.2 may not be restrained from proceeding in accordance with law for enforcement of the contractual liabilities of the petitioner as per the agreement.

4. Considering the above, it appears that when the petitioner has shown willingness to withdraw the allegations made in the past against respondent No.1, I find that the matter can be reconsidered by respondent No.1 at the stage of conciliation proceedings and for making reference, if he finds that it is the case for making reference.

5. So far as the challenge to the order of

termination is concerned, there is a considerable force in the contention raised by Mr.Gandhi that the petition before this Court cannot be maintained since as per the settled legal position, respondent No.2 is not a "State" within the meaning of Article 12 of the Constitution. As such the order of termination was the subject matter of conciliation proceedings and the petitioner may resort to the proceedings in accordance with law so far as challenge to the termination order is concerned. As regards the enforcement of the contractual rights between the petitioner and respondent No.2, if the petition cannot be maintained directly under Article 226 of the Constitution of India, it would be for the petitioner to ventilate the grievance before appropriate forum and it will be for the petitioner and respondent No.2 to pursue their rights as per the remedy known to law.

6. In view of the above, I am of the view that the following directions shall meet with the ends of justice:

6.1 Respondent No.1, Assistant Labour Commissioner shall reconsider the matter from the stage of conciliation proceedings of the dispute raised between respondent No.2 and the petitioner herein regarding the termination of service and he shall conclude the matter in accordance with law after hearing the petitioner as well as respondent No.2, within a period of two months from the date of receipt of the writ of this Court.

6.2 In view of the order passed for reconsideration, the order dated 30th October, 2002 passed by respondent No.1 - Annexure "A" - shall not operate and shall stand quashed and set aside.

7. The petitioner is disposed of in terms of the aforesaid directions only. No further orders are required to be passed. Rule made absolute to the aforesaid extent. No costs.

16-1-2004 (Jayant Patel, J.)

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